

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Service Rules for the 746-764 and 776-794
MHz Bands, and Revisions to Part 27 of the
Commission's Rules

WT Docket No. 99-168

Carriage of the Transmissions of Digital
Television Broadcast Stations

CS Docket No. 98-120

Review of the Commission's Rules and
Policies Affecting the Conversion to Digital
Television

MM Docket No. 00-39

To: The Commission

**REPLY TO THE SPECTRUM CLEARING ALLIANCE'S RESPONSE
TO MSTV'S PETITION FOR RECONSIDERATION AND CLARIFICATION**

The Association for Maximum Service Television, Inc. ("MSTV") submits this Reply to the Response¹ filed by the Spectrum Clearing Alliance ("SCA"). SCA's Response supports in part and opposes in part MSTV's Petition for Reconsideration and Clarification of the *Third Report and Order* in the above-captioned proceeding.²

MSTV welcomes SCA's support for an unequivocal commitment on the part of the Commission that any band-clearing arrangements must be voluntary. The suggestion that the Commission might consider mandatory band clearing if it finds such measures "necessary" invites delay and gamesmanship, rather than earnest negotiation and efficient band clearing.

¹ Response of the Spectrum Clearing Alliance, WT Docket No. 99-168 (April 6, 2001) ("SCA Response").

² Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Third Report and Order*, FCC 01-25 (rel. Jan. 23, 2001) ("*Third Report and Order*"); Petition for Reconsideration and Clarification of the Association for Maximum Service Television, Inc., WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-39 (March 16, 2001) ("Petition").

Moreover, the implication that the Commission has any such power is inconsistent with the scheme established by Congress.³ Out of respect for the Congressional mandate and market determinations achieved through private negotiations, the Commission should rule out mandatory band-clearing measures.

Regarding the appropriate standard to govern involuntary interference caused by DTV signals as a result of voluntary band-clearing agreements, MSTV reiterates its firm view that use of the *de minimis* interference standard to facilitate band clearing, rather than a “no new” interference standard, represents an unwarranted expansion of the *de minimis* rule to serve non-broadcast interests. The rule’s original purpose, agreed to and supported by MSTV and others in the broadcast industry, was to “provide flexibility for broadcasters in the implementation of DTV,” thus creating “additional opportunities for stations to maximize their DTV coverage and service.”⁴ MSTV continues to support the use of the *de minimis* rule for that purpose. However, MSTV opposes the use of the same rule for a wholly new purpose in this proceeding – to rush clearance of spectrum for new wireless services through the involuntary loss of service to broadcast viewers. As explained more fully in MSTV’s Petition, such piecemeal erosion of broadcast service without adequate offsetting broadcast-related benefits⁵ harms the important public interest in free over-the-air television.⁶

³ See 47 U.S.C. § 309(j)(14)(B).

⁴ Advanced Television Systems and their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd. 7418, 7450 ¶¶ 79, 80 (1998) (emphasis added).

⁵ The suggestion by SCA that the additional involuntary interference to non-participating broadcasters would be offset by better signal propagation for the relocating channel, SCA Response at 4, is unconvincing. Coverage will ultimately be dictated by the constraints of the allotment, not the propagation characteristics of the band.

⁶ Petition at 5-9.

SCA's support for expanding the Commission's *de minimis* standard for band-clearing purposes accurately reflects the short-term relocation interests of a relatively small number of broadcasters. While MSTV believes that those concerns are worthy of respect, we also recognize that they are ultimately outweighed by the long-term public interest concerns of broadcast viewers, and the broadcast industry as a whole, in preventing the erosion of existing broadcast service for the sake of accelerating band clearing for new wireless service.

A principal concern voiced by SCA, and further articulated in its Engineering Statement, is that use of the "no new" interference standard rather than the *de minimis* standard might impose administrative processing costs, including possibly requiring special notations in the CDBS system and modifications to processing software.⁷ These administrative tasks are well within the capabilities of the FCC staff and would not impose unreasonable costs or hamper the transition. They should not prevent the Commission from adopting the most appropriate rule for the particular circumstances, which in this case means the "no new" interference rule.

SCA states that application of a "no new" interference standard "would be penalizing broadcasters for attempting to clear the 700 MHz band" and predicts that use of the stricter standard could prevent band-clearing agreements that are in the public interest.⁸ These statements are contradicted, however, by SCA's observation elsewhere in its response that use of the "no new" interference standard would produce "only minimal differences in evaluation results."⁹ If indeed the practical result from SCA's perspective is "minimal," then the Commission should, on principle, choose the standard that best protects the public interest in preservation of broadcast service. Even assuming *arguendo* that a relocating broadcaster would

⁷ SCA Response at 3 & attch. 2 at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 3-4.


suffer a "penalty," the choice to incur it would be voluntary, and the relocating broadcaster would be in the best position to seek alternatives or ensure that the relocation price compensates for any additional compliance costs. This stands in contrast to the involuntary, uncompensated loss of service that will be imposed on an undetermined number of broadcast viewers and non-participating broadcasters if the Commission affirms its decision to use the *de minimis* rule for this new purpose.

For the reasons stated herein, MSTV renews its request that the Commission reconsider, modify, and clarify the service rules and policies adopted in this proceeding in the manner described in MSTV's Petition.

Respectfully Submitted,

**THE ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.**

VICTOR TAWIL
SENIOR VICE PRESIDENT
THE ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.
1776 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036
PHONE: (202) 861-0344
FAX: (202) 861-0342



ELLEN P. GOODMAN
JENNIFER A. JOHNSON
STANFORD K. MCCOY
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
PHONE: (202) 662-6000
FAX: (202) 662-6291

Its Attorneys

April 20, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to the Spectrum Clearing Alliance's Response to MSTV's Petition for Reconsideration and Clarification has been served by first-class mail, postage prepaid, this 20th day of April, 2001, on:

Lowell W. Paxson
Paxson Communications Corporation
601 Clearwater Park Road
West Palm Beach, FL 33401

Jovon Broadcasting Corporation
ATTN: General Counsel
18600 S. Oak Park Avenue
Tinley Park, IL 60477

President
Mid-State Television
2900 Park Avenue West
Mansfield, OH 44906

Eddie L. Whitehead
President
Whitehead Media, Inc.
832 Folsom Street, Suite 700
San Francisco, CA 94107

Laurence Ausubel
Spectrum Exchange Group, LLC
2920 Garfield Terrace, N.W.
Washington, D.C. 20008

Director, New Business Ventures
WRNN-TV Associates Limited Partnership
721 Broadway
Kingston, NY 12401

M. Lamb
Daystar Television Network
4201 Pool Road
Colleyville, TX 76034

Allen & Company Incorporated
ATTN: General Counsel
711 Fifth Avenue, 9th Floor
New York, NY 10022

Christian Communications of Chicagoland, Inc.
ATTN: General Counsel
38 S. Peoria Street
Chicago, IL 60607

Bryant Broadcasting Co.
ATTN: General Counsel
200 East Spring Street
Lebanon, TN 37087

Caroline K. Powley
Unicorn Communications
9279 Dutch Hill Road
West Valley, NY 14171

William M. Smith
B&C Kentucky, LLC
9279 Dutch Hill Road
West Valley, NY 14171

Harry Pappas
Pappas Telecasting Companies
500 South Chinowth Road
Visalia, CA 93277

Sanger Telecasters, Inc.
ATTN: General Counsel
706 W. Herndon Avenue
Fresno, CA 93650

Kent E. Lillie
President and CEO
Shop At Home, Inc.
5388 Hickory Hollow Parkway
Antioch, TN 37013-3128

Colby M. May
Counsel for Trinity Christian Center of Santa Ana, Inc.
d/b/a Trinity Broadcasting Network
1000 Thomas Jefferson Street, N.W.
Suite 609
Washington, D.C. 20007-3803

Colby M. May
Counsel for Radiant Life Ministries, Inc.
1000 Thomas Jefferson Street, N.W.
Suite 609
Washington, D.C. 20007-3803

Colby M. May
Counsel for Tri-State Christian T.V. Inc.
1000 Thomas Jefferson Street, N.W.
Suite 609
Washington, D.C. 20007-3803

Entravision Holdings, LLC
ATTN: General Counsel
2425 Olympic Boulevard
Suite 6000 West
Santa Monica, CA 90404

Barry Faber
General Counsel
Sinclair Broadcast Group, Inc.
10706 Beaver Dam Road
Hunt Valley, MD 21030

Brevard College
ATTN: General Counsel
1519 Clearlake Road
Cocoa, FL 32922

Christian Television Network/
Christian Television of Palm Beach
County, Inc.
ATTN: General Counsel
28059 US Highway 19 North
Clearwater, FL 34618

High Mountain Broadcasting Corp.
ATTN: General Counsel
112 High Ridge Avenue
Ridgefield, CT 0687

Jacksonville Educators
Broadcasting, Inc.
ATTN: General Counsel
3101 Emerson Expressway
Jacksonville, FL 32247

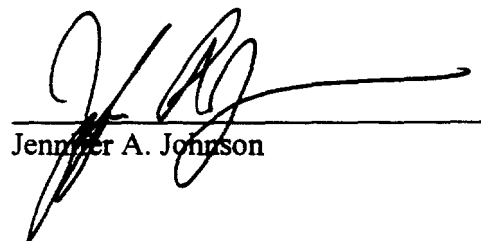
Living Faith Ministries
ATTN: General Counsel
Highway 460
Vansant, VA 24656

Connecticut Public Broadcasting, Inc
ATTN: General Counsel
240 New Britain Avenue
Hartford, CT 06106

Butler University
ATTN: General Counsel
4600 Sunset
Indianapolis, IN 46208

Good Companion Broadcasting
ATTN: General Counsel
Box 229
262 Swamp Fox Road
Chambersburg, PA 17201

McLaughlin Broadcasting, Inc.
ATTN: General Counsel
950N. Main Street
Sumter, SC 29150



Jennifer A. Johnson